

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EPA-04 CEQ-01 AID-05 CEA-01 CIAE-00

COME-00 EB-07 EA-10 FRB-01 INR-07 IO-10 NEA-10

NSAE-00 OPIC-06 SP-02 TRSE-00 CIEP-02 LAB-04 SIL-01

OMB-01 FEA-01 ERDA-07 DODE-00 FPC-01 H-02 INT-05 L-03

NSC-05 PM-03 USIA-15 SAM-01 OES-05 SS-15 STR-04 /152 W

----- 003548

P 101825Z JUL 75

FM USMISSION OECD PARIS

TO SECSTATE WASHDC PRIORITY 7908

UNCLAS OECD PARIS 17954

DEPT PASS EPA, CEQ

E.O. 11652: N/A

TAGS: SENU, OECD

SUBJECT: MEETING OF OECD ENVIRONMENT COMMITTEE

TRANSFRONTIER POLLUTION (TFP) GROUP, JULY 7-9

1. SUMMARY: TFP GROUP MET IN PARIS JULY 7-9 TO REVIEW SECRETARIAT PAPERS ON LIABILITY AND RESONSIBILITY FOR TRANSFRONTIER POLLUTION AND TO CONSIDER GROUP'S FUTURE WORK PROGRAM. US REP (CROOK) ELECTED VICE-CHAIRMAN. NEXT MEETING SCHEDULED FOR DECEMBER 1, 2, AND 3, 1975. END SUMMARY.

2. MEETING OPENED WITH REVIEW OF GROUP ACTIVITIES ON "EQUAL RIGHT OF HEARING" ISSUES. ABOUT ONE-HALF OF PARTICIPATING COUNTRIES HAVE PROVIDED RESPONSE TO SECRETARIAT QUESTIONNAIRE.

SECRETARIAT (SMETS) ESTIMATED THAT DRAFT REPORT SHOULD BE COMPLETED BY OCTOBER 15. DRAFT REPORT TO BE DISCUSSED AT DECEMBER MEETING OF TFP GROUP PRIOR TO SUBMISSION TO FEBRUARY 1976 ENVIRONMENT UNCLASSIFIED

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COMMITTEE. SPANISH AND NETHERLANDS DELS OPPOSED ANY

CONSIDERATION OF FURTHER WORK IN ERH AREA (INCLUDING FORMULATION OF DRAFT RECOMMENDATIONS) UNTIL REPORT COMPLETED AND APPROVED BY ENVIRONMENT COMMITTEE.

3. DISCUSSION OF LIABILITY AND RESPONSIBILITY ISSUES
CONSUMED MOST OF MEETING. DISCUSSION LARGELY UNFOCUSED AND NON-COMMITTAL, WITH RHINE STATES - FRANCE, GERMANY, AND NETHERLANDS - NOT TAKING PARTICULARLY ACTIVE PART. 1974 CANADIAN PAPER ON LIABILITY AND COMPENSATION FOR TFP REINTRODUCED; PAPER GENERALLY SUPPORTS USE OF LOCAL REMEDIES IN CASES OF TFP CAUSED BY PRIVATE ACTIVITIES. PAPER RECEIVED GENERAL SUPPORT, INCLUDING US. HOWEVER, DURING SUBSEQUENT DISCUSSION, CANDEL (DON SMITH, LEGAL OPERATIONS, EXTAF) TOOK POSITION THAT A STAE IS STRICLY LIABLE FOR NY TFP CAUSED BY PRIVATE CONDUCT WITHIN ITS TERRITORY. (FYI - TO USDEL'S KNOWLEDGE, THIS IS FIRST TIME IN RECENT MONTHS THAT EXT AFF LAWYER HAS REITERATED ABSOLUTIST CANADIAN CONCEPTION OF STATE LIABILITY. EARLIER INDICATIONS THAT CANADIANS RETHINKING POSITION IN LIGHT OF FLATHEAD, ET AL, MAY THEREFORE BE INCORRECT. END FYI).

4. US DEL BELIEVES GENERALLY UNSATISFACTORY LEVEL OF DISCUSSION ON RESPONSIBILITY AND LIABILITY ISSUES BEARS OUT EARLIER US DOUBTS ABOUT UTILITY OF THIS TOPIC FOR CONSIDERATION BY TFP GROUP. IN DISCUSSION OF FURTHER WORK PROGRAM, US URGED PROMPT CONCLUSION OF THE REQUIRED REPORT ON LIABILITY AND RESPONSIBILITY TO COUNCIL ON BASIS OF WORK ALREADY DONE, SO THAT TFP GROUP COULD TURN ITS EFFORTS TO MORE CONCRETE PROJECTS.

5. GROUP AGREED TO INSTRUCT SECRETARIAT TO PREPARE DRAFT REPORT ON PROBLEMS OF RESPONSIBILITY AND LIABILITY FOR DISCUSSION AT DECEMBER MEETING AND FOR CONSIDERATION AT FEB. 1976 ENVIRONMENT COMMITTEE MEETING.

6. SECRETARIAT (SMETS) STATED THAT COMPLETION OF REQUIRED LEGAL REPORTS WOULD REQUIRE ALL SECRETARIAT RESOURCES DURING 1975. FOR 1976, SMETS ESTIMATED THAT TFP GROUP WOULD HAVE THREE SECRETARIAT MAN-YEARS, MORE OR LESS, AVAILABLE. SMETS PROPOSED TO DIVIDE THESE
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RESOURCES EQUALLY BETWEEN LEVAL AND NON-LEGAL TOPICS. US CONCURRED, BUT URGED THAT HIGHER PROPORTION OF RESOURCES BE DEVOTED TO SUBSEQUENT PROJECTS FOR CONCRETE APPLICATION OF TFP PRINCIPLES.

7. IN DISCUSSION OF CONFETE PROJECTS TO IMPLEMENT TFP PRINCIPLES,US, JOINED BY NORWEGIANS, URGED THAT HIGHEST PRIORITY BE GIVEN TO STUDIES OF JOINT MANAGEMENT

AND CONTINGENCY PLANNING. US, JOINED BY GERMANS, VOICED RESERVATIONS ABOUT UTILITY OF STUDIES OF INTERNATIONAL TRANSPORT OF TOXIC WASTES. BELGIANS DID NOT RISE TO SUPPORT THIS PROJECT (WHICH DEL UNDERSTANDS TO HAVE BEEN BELGIAN INITIATIVE). SECRETARIAT, HOWEVER, STRESSED PERCEIVED IMPORTANCE OF TOPIC, AND INDICATED INTENTION OF HAVING CONSULTANT'S REPORT PREPARED BY AUTUMN OF 1976.

8. AT CONCLUSION OF MEETING, USDEL (CROOK) AND BELGIAN DEL (LEFEVREL) ELECTED VICE-CHAIRMAN OF GROUP.

9. SECRETARIAT TANELD SUMMARY OF TWO-DAY DISCUSSION ON LIABILITY AND RESPONSIBILITY FOR APPROVAL BY TFP GROUP AS PART OF THE RECORD AND AS A FIRST APPROACH TO AN OUTLINE OF THE DRAFT REPORT. SEVERAL MEMBERS OBJECTED HOWEVER TO GIVING IMMEDIATE APPROVAL TO THIS DOCUMENT, AND IT WAS AGREED THAT MEMBER COUNTRIES COULD SUBMIT WRITTEN COMMENTS THEREON BY DEADLINE JULY 20. TURNER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: ENVIRONMENT, POLLUTION CONTROL, MEETING AGENDA, COMMITTEE MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 10 JUL 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975OECDP17954
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750239-0044
From: OECD PARIS
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750769/aaaacjnt.tel
Line Count: 135
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: MartinML
Review Comment: n/a
Review Content Flags:
Review Date: 23 APR 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <23 APR 2003 by ThomasVJ>; APPROVED <10 MAR 2004 by MartinML>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: MEETING OF OECD ENVIRONMENT COMMITTEE TRANSFRONTIER POLLUTION (TFP) GROUP, JULY 7-9
TAGS: SENV, OECD
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006